

[REDACTED] Deputy Personnel Officer

10 August 1949

Assistant General Counsel

[REDACTED]

1. There has been received your memorandum, dated 29 July 1949, concerning the above subject. After outlining various communications concerning the subject and additional facts, you query whether legal authority exists for the issuance of an amended personnel action changing the effective date from 21 June 1948 to 14 June 1948.

2. Certain basic facts would appear to be of particular importance in so far as the ruling of this office is concerned. You list Cable No. WASH 7439, dated 25 May 1948, which stated that since the Director's policy required all EOD employees to enter on duty in Washington, subject must report to Washington. [REDACTED] in a memorandum dated 22 June 1948 advised Personnel Division, OSD, that the Director had provisionally approved subject's employment. Subsequently, Cable [REDACTED], dated 1 July 1948, advised the field that subject had been entered on duty as of 21 June 1948. Although not clear, it is assumed that the Director's provisional approval of subject's employment occurred on or before 21 June 1948.

3. The matter of making retroactive appointment actions has been considered by the Comptroller General on many occasions. The rule is well established that retroactive appointments do not entitle the employee to any compensation prior to the date the appointment was actually made by the proper authority. Stated in another way, the rule is that the compensation may not be paid to an employee prior to the effective date of his appointment, and that an appointment may not be made retroactively effective to cover services rendered (20 Comp. Gen. 269, 10 November 1940; 17 Comp. Gen. 312, 11 October 1947).

4. In this case the Cable of 25 May 1948 specifically stated that employee must enter on duty in Washington in accordance with the Director's policy. The Cable of 1 July 1948 advised the field of the EOD date as 21 June 1948. Presumably, that Cable was properly authorized and supported by the signature of the person authorized to appoint personnel. Paragraph 1.2 of the Confidential Funds Regulations provides that confidential funds will be used only for necessary official Government purposes and generally in accordance with laws and regulations governing vouchered funds, the primary purpose being to preserve security of operations and personnel. On the basis of the above and the facts presented to this office, your question must be answered in the negative. However, since the inability to make subject's appointment effective on 14 June 1948, the day after his transfer from GMSUS, was due to CIA security regulations which probably did not contemplate such a situation, it would appear that it is within the Director's authority to approve the EOD date as 14 June 1948.

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5. In connection with the travel expenses of subject prior to the effective date of his appointment, it would appear that that portion of the expenses concerned in the transfer from [redacted] to Washington is consistent with the intent of Section 1 (a) of Public Law 600. The situation here involved is somewhat similar to the then current practice in CIA of making appointments of persons in the United States and bringing them to Washington for TTB prior to their departure to designated permanent posts of duty abroad. In those cases at that time, the employee's FOB date was not made effective until he reached Washington although travel expenses from his place of residence to Washington were paid. Since the expenses paid were in accord with the intent of Section 1 of Public Law 600, no objection has been taken by this office to such payments on the ground that the individuals concerned were not employees during the period travel expenses were incurred. Similarly, no objection will be taken by this office in the case at hand to the expenses of travel from [redacted] to Washington, if otherwise appropriate. 25X1A

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6. In connection with certain travel expenses of subject between Washington and New York, it is assumed that they were properly approved by competent travel authority. However, since the individual was not an employee at the time, it is felt that such expenses necessarily must be approved under Parts VII and IX of the Special Funds Regulations in force at that time. On the basis of such approval, this office would see no legal objection to the payments as made if otherwise in accordance with regulations. If the Director approves the FOB date of 14 June 1948, no further action is required concerning the items mentioned in this paragraph.

7. Copy of this memorandum will be forwarded to Confidential Funds Branch for their information and action.

cc: CFP

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cc: Chrono  
Subject  
Legal Decisions

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